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This issue contains

T.D. 76-108

C.D. 4643 and 4644

Protest abstracts P76/81 through P76/93

Reap. abstract R76/53

DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

(T.D. 76–108)

Bonds

Approval and discontinuance of Carrier bonds, Customs Form 3587

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., April 12, 1976.

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of list.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director; amount
Acosta Fast Transportation Service, Inc., P.O. Box 5693, Old San Juan, PR; motor carrier, Peerless Ins. Co.	Jan. 12, 1976	Mar. 4, 1976	San Juan, PR; $25,000
All Southern Trucking, Inc., P.O. Box 2698, Tampa, FL; motor carrier, Continental Casualty Co.	Feb. 3, 1976	Feb. 13, 1976	Tampa, FL; $25,000
Barnes Truck Line, Inc., Wilson, NC; motor carrier, Fireman's Fund American Ins. Co. (PB 2/20/71) D 3/3/76 [1]	Feb. 16, 1976	Mar. 4, 1976	Wilmington, NC; $25,000
Barracuda Seafood Transportation Corp., 3511 E. North Ave., Baltimore, MD; motor carrier, Liberty Mutual Ins. Co.	Nov. 20, 1975	Mar. 8, 1976	Baltimore, MD; $25,000
Brada Miller Freight System, Inc., 1210 S. Union Post Office Box 935, Kokomo, IN; motor carrier, American Casualty Company D 4/5/76	Dec. 10, 1972	Dec. 20, 1972	Cleveland, OH; $50,000

See footnotes at end of list.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director; amount
Burnham Van Service, Inc., P.O. Box 7966, Columbus, GA; motor carrier, U.S. Fire Ins. Co.	Dec. 16, 1975	Feb. 27, 1976	Savannah, GA; $25,000
Caldwell Transport Ltd., P.O. Box 127, Florenceville, N.B. Canada EOJ 1KO; motor carrier, Royal Globe Ins. Co.	Dec. 16, 1975	Feb. 25, 1976	Portland, ME; $25,000
Canyon Distributors, Ltd., 6051 Centre Street South, Calgary, Alberta, Canada; motor carrier, Transamerica Ins. Co. D 3/1/76	Jan. 31, 1973	Feb. 1, 1973	Great Falls, MT $25,000
W. J. Casey Trucking & Rigging Co., Inc., 1200 Springfield Rd., Union, NJ; motor carrier, Reliance Ins. Co.	Feb. 26, 1976	Mar. 9, 1976	New York Seaport; $50,000
Eastern Express, Inc., 1450 Wabash Ave., Terre Haute, IN; motor carrier, National Union Fire Ins. Co. of Pittsburgh, PA.	Feb. 23, 1976	Mar. 4, 1976	Cleveland, OH; $50,000
Franks & Son, Inc., Route 1, Box 108A, Big Cabin, OK; motor carrier, The Aetna Casualty & Surety Co.	Feb. 16, 1976	Mar. 8, 1976	Nogales, AZ; $25,000
H & H Trucking Co., 10360 N. Vancouver Way, Portland, OR; motor carrier, Allied Fidelity Ins. Co.	Feb. 24, 1976	Mar. 8, 1976	Portland, OR; $25,000
Milne Truck Lines, Inc., 2200 South 400 West, Salt Lake City, UT; motor carrier, American Manufacturer's Mutual (PB 2-26-69) D 2-25-76 [2]	Feb. 26, 1976	Feb. 25, 1976	Los Angeles, CA; $40,000
Republic Van & Storage Co., Inc., P.O. Box 8615, Baltimore, MD; motor carrier, Ins. Co. of North America	Nov. 3, 1975	Dec. 10, 1975	Baltimore, MD; $25,000
Texas Interstate Motor Express, Inc., 2410 Commerce St., Houston, TX; motor carrier, Peerless Ins. Co.	Feb. 20, 1976	Mar. 10, 1976	Houston, TX; $25,000
Texas Tex-Pack Express, Inc., 150 East Zavalla, San Antonio, TX; motor carrier, U.S. Fire Ins. Co.	Oct. 28, 1975	Mar. 1, 1976	Laredo, TX; $25,000
Transamerican Freight Lines, Inc., 5650 Foremost Drive, S.E., Grand Rapids, MI; motor carrier, Seaboard Surety, A N.Y. Corp. D 12/3/75	May 1, 1974	May 1, 1974	Detroit, MI; $50,000
Trans-American Van Service, Inc., 12301 W. Freeway, Ft. Worth, TX; motor carrier, Great American Ins. Co.	Nov. 19, 1975	Mar. 10, 1976	Houston, TX; $25,000

See footnotes at end of list.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director; amount
Trans-American World Transit, Inc., 12301 W. Freeway, Ft. Worth, TX; motor carrier, Great American Ins. Co.	Nov. 10, 1975	Mar. 10, 1976	Houston, TX; $25,000
Trux Transport, Inc., 508 So. Airport Blvd., South San Francisco, CA; motor carrier, Pacific Ins. Co.	Oct. 14, 1975	Mar. 3, 1976	San Francisco, CA; $25,000

[1] Surety is Reliance Ins. Co.
[2] Surety is Transport Indemnity Co.

(BON–3–03)

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

ERRATUM

In Customs Bulletin Vol. 10, No. 15, dated April 14, 1976, T.D. 76–100, *Generalized System of Preferences*, on page 12, paragraph 5 should begin: "Generally, goods that are . . .".

Decisions of the United States Customs Court

Customs Decisions

(C.D. 4643)

THE ASHFLASH CORPORATION *v.* UNITED STATES

Portable electric lamps—"Blinker" lanterns

PORTABLE ELECTRIC LAMPS—"BLINKER" LANTERNS "MORE THAN" DOCTRINE

The involved "blinker" lanterns are portable battery-operated combination articles comprised of a searchlight portion for illumination and an automatic signal-warning red flasher for emergency

signalling. Although utilizing a common power source (viz., dry cell batteries), the searchlight and signal-warning flasher components have separate bulbs, sockets, lenses, wiring, contacts, and in some instances separate switches. The signal-warning function does not assist, improve, or augment the searchlight function. The court has concluded that the imports serve two independent and coequal functions: as a searchlight and as a signal-warning flasher; and that therefore the latter function is not incidental, auxiliary or subordinate to the searchlight function. Accordingly, the "blinker" lanterns are "more than" the portable electric lamps covered by item 683.80, TSUS, as classified by the Government, and are properly dutiable as electrical articles not specially provided for under item 688.40, TSUS, as claimed by plaintiff. *Fedtro, Inc.* v. *United States*, 59 CCPA 16, C.A.D. 1028, 449 F. 2d 1395 (1971); *Fedtro, Inc.* v. *United States*, 72 Cust. Ct. 267, C.D. 4548, 376 F. Supp. 1398 (1974); and *Oxford International Corp.* v. *United States*, 70 Cust. Ct. 217, C.D. 4433 (1973) followed. *Continental Exchange, Ltd.* v. *United States*, 60 Cust. Ct. 233, C.D. 3333, 281 F. Supp. 892 (1968); *Astra Trading Corp.* v. *United States*, 56 Cust. Ct. 555, C.D. 2703 (1966); and *Remington Rand Div. of Sperry Rand Corp.* v. *United States*, 51 CCPA 57, C.A.D. 837 (1964) distinguished.

CLASSIFICATION OF COMBINATION ARTICLES HAVING FUNCTIONS COVERED BY DIFFERENT TARIFF PROVISIONS

Combination articles having coequal functions may not be classified under a tariff description applicable only to one of the functions. While the searchlight function of the "blinker" lanterns is covered by item 683.80, the signal-warning flasher function on the other hand is embraced by the provision of item 685.70, TSUS, for electrical visual signalling apparatus. Consequently, the judicial precedents applying the "more than" doctrine to combination articles having coequal functions covered by different tariff provisions are plainly applicable.

SAMPLES—POTENT WITNESSES

Examination of the samples in evidence, including turning on the signal-warning flasher outdoors at night, sufficiently demonstrated their potential usefulness to motorists and others as a signal-warning apparatus in emergency situations. Hence, expert testimony was not required to establish this fact. *Oxford International Corp.* v. *United States*, 70 Cust. Ct. 217, 223, C.D. 4433 (1973).

JUDICIAL NOTICE—USE OF "BLINKER" LANTERNS FOR EMERGENCY SIGNALLING

Moreover, the court may take judicial notice that "blinker" lanterns, such as those before the court, are widely advertised and sold to consumers in automotive, camping and other retail outlets as devices which may be used for their signal-warning function as well as their illuminating function.

Court Nos. 69/43133, etc.

Ports of New York and Los Angeles

[Judgment for plaintiff.]

(Decided March 30, 1976)

Joseph Winston for the plaintiff.
Rex E. Lee, Assistant Attorney General (*John A. Gussow* and *Joseph R. Borich*, trial attorneys), for the defendant.

NEWMAN, Judge: The issue in these 36 protests, consolidated pursuant to defendant's motion, concerns the proper tariff classification of certain "blinker lanterns", which were imported from Hong Kong during the years 1967 through 1970 and entered at the ports of New York and Los Angeles.

The merchandise was assessed with duty at the rate of 13.75 per centum ad valorem under item 683.80 of the Tariff Schedules of the United States. Plaintiff claims that the imports are properly dutiable under item 688.40, TSUS, as modified by T.D. 68–9. The applicable rate of duty under item 688.40 pursuant to T.D. 68–9 depends upon the year the merchandise was entered.[1]

I have concluded that the Government's classification was erroneous, and that the merchandise is properly dutiable under item 688.40, TSUS, as claimed by plaintiff.

STATUTES INVOLVED

Classified under:

	Portable electric lamps with self-contained electrical source, and parts thereof:	
	* * * * * * *	
683.80	Other	13.75% ad val.

Claimed under:

688.40	Electrical articles, and electrical parts of articles, not specially provided for	* * *

THE RECORD

Each party called one witness: plaintiff's witness was Timothy A. O'Connell, its executive vice president; defendant's witness was Robert Brindley, market manager for the Battery Products Division of Union Carbide Corporation. Additionally, numerous exhibits (20 by plaintiff, 6 by defendant), including representative samples of the merchandise, were introduced in evidence.

[1] The rates of duty under item 688.40, TSUS, as modified by T.D. 68-9, for the years 1967, 1968, 1969 and 1970 were 11.5, 10, 9, and 8 per centum ad valorem respectively.

The pertinent facts are:

The imports comprise various models of portable battery-operated "blinker" lanterns. The term "blinker" refers to the fact that in addition to a searchlight, which throws a constant light beam through a clear lens, the lanterns have an automatic signal-warning red flasher for use in emergency situations. Both the signal-warning flasher and searchlight portions utilize a common power source, viz., a dry cell battery or batteries.

The testimony, as well as an examination of the samples, reveals that the signal-warning flasher consists of a "blinking bulb",[2] socket, wiring, contacts, a red lens, or a translucent plastic collar which encloses the flasher in some of the models. Also, in eight of the imported models the signal-warning flasher includes a telescoping of a "swinging" (pivoting) arm. Some models have separate switches for the searchlight and the signal-warning flasher, while other models have a single multipositional switch designed to activate both the searchlight and signal-warning flasher. However, regardless of whether the particular model has a single multipositional switch or dual switches, the searchlight and signal-warning flasher may be used concurrently or independently.

It further appears that portable battery-operated lanterns are sold which function solely as searchlights and hence do not have a signal-warning flasher (viz., exhibit 2). Conversely, portable battery-operated signal-warning flashers are sold which serve no other function (viz., exhibit 20). Thus, the imports combine both the searchlight and signal-warning functions with a common source of power for both functions.

To summarize, I find that although utilizing a common power source, the searchlight and signal-warning flasher portions have separate bulbs, sockets, lenses, wiring, contacts, and in most of the models separate switches; that the imports serve two independent and coequal functions as a searchlight and as a signal-warning flasher; that the signal-warning function does not assist, improve or augment the searchlight function; and finally, that neither of the dual functions is incidental, auxiliary or subordinate to the other function.

Contentions of the Parties

Defendant contends that item 683.80 is in *eo nomine* provision and that "the merchandise at bar is, in fact, a form of portable electric lamp includable in the *eo nomine* provision for such articles, and was properly classified under item 683.80 * * *". "In essence", defendant

[2] This bulb "is caused to blink by virtue of two dissimilar metal materials deflecting against one another" (R. 159-160).

urges "the portable electric lamps, notwithstanding the blinking features, which are subordinate and incidental to the main function of providing illumination, are not 'more than' portable electrical lamps".

Plaintiff, on the other hand, insists that each of the imports is a combination illuminating and signalling device, and that neither of those dual functions is subordinate to the other. Consequently, argues plaintiff, the signal-warning flasher makes the imports "more than" the portable electric lamps covered by item 683.80

Issue Presented

The legal issue is whether the "blinking" lanterns are a form of portable electric lamp within the *eo nomine* provision therefor in item 683.80, TSUS, as contended by defendant, or whether the signal-warning flasher makes the imports "more than" such portable lamps, as urged by plaintiff.

Decision

It is well settled that where merchandise has a single primary function and an incidental, subordinate, or secondary function, it is classifiable on the basis of its primary design, construction, and function. *Trans-Atlantic Company* v. *United States*, 60 CCPA 100, C.A.D. 1088, 471 F. 2d 1397 (1973); *Great Western Sugar Co. et al.* v. *United States*, 59 CCPA 56, C.A.D. 1038, 452 F. 2d 1394 (1972); *Arthur J. Fritz & Co. et al.* v. *United States*, 59 CCPA 46, C.A.D. 1036, 452 F. 2d 1399 (1971); *United Carr Fastener Corporation* v. *United States* (*Northern Screw Corp., Party in Interest*), 54 CCPA 89, C.A.D. 913 (1967).

Further, a long line of authorities holds that merchandise which constitutes more than a particular article or which has additional nonsubordinate or coequal functions is not classifiable as that article. *Dollar Trading Corp.* v. *United States*, 60 CCPA 10, C.A.D. 1074, 468 F. 2d 631 (1972); *United States* v. *Flex Track Equipment Ltd. et al.*, 59 CCPA 97, C.A.D. 1046, 458 F. 2d 148 (1972); *E. Green & Son* (*New York*), *Inc.* v. *United States*, 59 CCPA 31, C.A.D. 1032, 450 F. 2d 1396 (1971); *Servo-Tek Products Co., Inc.* v. *United States*, 57 CCPA 13, C.A.D. 969, 416 F. 2d 1398 (1969); *Cragstan Corporation* v. *United States*, 51 CCPA 27, C.A.D. 832 (1963); *United States* v. *The A. W. Fenton Company, Inc.*, 49 CCPA 45, C.A.D. 794 (1962); *United States* v. *Milton Diamond and Massce-Barnett Co., Inc.*, 42 CCPA 9, C.A.D. 561 (1954); *Geo. S. Bush & Co., Inc.*, v. *United States*, 38 CCPA 30, C.A.D. 435 (1950); *United States* v. *Sutherland International Despatch et al.*, 21 CCPA 264, T.D. 46790 (1933); Sturm, *A Manual of Customs Law* (1974), pp. 298–300. Hence, it

follows that combination articles having coequal functions may not be classified under a tariff description applicable only to one of the functions. As the rule was aptly put by Judge Re in *Oxford International Corp.* v. *United States*, 70 Cust. Ct. 217, 221, C.D. 4433 (1973):

> It is settled that a combination or multifunction article is not classifiable for tariff pruposes under a specific statutory provision describing only one of those features or functions as the importation is more than the article described therein. * * *

In *Oxford*, certain "horn-lights" classified as parts of bicycles under item 732.36, TSUS, were claimed properly dutiable under the provision in item 685.70, TSUS, for electrical "sound or visual signalling apparatus". Judge Re found that while the horn portion of the combination articles was an electrical sound signalling device, the light portion did more than merely serve as a signal in that it primarily functioned as an illuminating device. Consequently, the court determined "that the horn-lights possess an important illuminating feature at least coequal to their signalling function, thus making them more than signalling apparatus". (70 Cust. Ct. at p. 224.)

Here, the primary function of the signal-warning flasher is plainly that of signalling rather than illumination. The signal-warning flasher, then, is essentially an electrical visual signalling apparatus of the type covered by item 685.70. While in *Oxford*, it was the light (illuminating) portion of the horn-light combination articles that made them more than sound and visual signalling apparatus under item 685.70, here it is the signal-warning flasher (a signalling device) which constitutes the "blinker" lanterns more than the portable lamps covered by item 683.80. Thus, notwithstanding the factual difference between *Oxford* and the present case, the "more than" rationale applied by the court in *Oxford* is fully applicable here.

In sum, while the searchlight portion of the imports concededly falls within the purview of item 683.80, the signal-warning flasher portion performs a visual signalling function which is separately covered by item 685.70. The separate tariff provision for electrical visual signalling apparatus in item 685.70 is a clear indication of a Congressional intent to exclude battery-operated blinking lights used for signalling from item 683.80. Accordingly, the judicial precedents applying the "more than" doctrine to combination articles having coequal functions covered by different tariff provisions are obviously controlling in the present case.

As previously mentioned herein, the components comprising the signal-warning flasher in the "blinker" lanterns, i.e., the bulb, socket, wiring, contacts, lens and in some of the models a swinging or tele-

scoping arm, are independent of and take no part in the operation of the searchlight function.[3] Moreover, as we have noted, the two functions utilize separate switches or a selectively operative multi-positional switch. This factual setting is analogous to those in *Fedtro, Inc.* v. *United States*, 59 CCPA 16, C.A.D. 1028, 449 F. 2d 1395 (1971), and in *Fedtro, Inc.* v. *United States*, 72 Cust. Ct. 267, C.D. 4548, 376 F. Supp 1398 (1974).

In the first cited *Fedtro* case, merchandise invoiced as "4-way Flasher Switches for Automobiles" was classified by the Government under the provision for switches in item 685.90, TSUS. The importer claimed that the merchandise was more than a switch and properly dutiable as visual signalling apparatus under item 685.70, TSUS. The article in issue was described by the appellate court as follows (59 CCPA at p. 18):

> The imported article is used to connect the front and back signal lamps of an automobile with the flasher circuit for the directional signals, in such a manner that all four lamps flash simultaneously. The article includes a switch which is selectively operative to provide the 4-way flashing action, an indicator light, a capacitor connected across the switch terminal, and a fuse in series circuit with the switch. These elements are disposed in a housing which is adapted for mounting on the dashboard. The indicator light is made up of a red jeweled lens on the housing cooperating with a lamp bulb in a socket disposed within the housing. The socket of the indicator light is so wired that, when the 4-way switch is on, the light flashes simultaneously with the front and back signal lamps. When the 4-way switch is off, the indicator light is in circuit through the brake light switch of the automobile so as to indicate when that switch is closed.

Plaintiff's contention that the merchandise was "more than" a switch was predicated upon the indicator light. The trial court rejected the plaintiff's "more than" argument, stating (64 Cust. Ct. 323, 330, C.D. 3998 (1970)):

> It is apparent from the record that [the merchandise] was designed to function primarily as a switch. Indeed [it] is even described as a "Flasher switch" on the installation and operation instruction card which accompanied it * * *. The fact that [it] monitors the brake light switch and has other features and functions is, in the court's opinion, merely incidental to the primary function of the electrical switch. It is, therefore, not more than a switch. * * *

[3] It is, however, noted that the searchlight and signal-warning flasher in most of the models share a common "base plate" adapted to holding a battery by screws or a housing for holding the battery or batteries.

In reversing the trial court's judgment, the appellate court commented (59 CCPA at p. 18):

> We disagree with the court that the function of the indicator light, in particular the function of monitoring the operation of the brake light switch is merely incidential to the switching function of the merchandise. *The indicating light structure and its circuitry take no part in the switching function. These elements were specifically designed to add additional functions to the merchandise which are significantly different from the switching function. Thus, the merchandise is more than an apparatus for making or breaking electrical circuits.* [Emphasis added.]

In the second *Fedtro* case, articles comprising a combination battery charger and battery tester for small dry cell batteries were classified by the Government as "rectifying apparatus" pursuant to item 682.60, TSUS. The Government contended that the merchandise was primarily a rectifying apparatus (a battery charger), and that the testing feature (a light bulb with its related circuitry), which performed no rectifying function, was an incidential or auxiliary feature. The importer argued that the dual function articles were "more than" rectifying apparatus, and that they were properly dutiable under item 688.40, TSUS.

In *Fedtro*, this court found that there were circumstances where the testing feature would be utilized but the charging feature would not be utilized. Moreover, paraphrasing a portion of the appellate court's opinion in the *Fedtro* case involving the automobile flasher switches (59 CCPA at p. 18), this court determined that: "The [testing] light structure and its circuitry take no part in the [rectifying] function. These elements were specifically designed to add [an] additional function to the merchandise which is significantly different from the [rectifying] function. Thus, the merchandise is more than [a rectifying apparatus]".

The facts in the present case are analogous to those in the two *Fedtro* cases discussed *supra*. There are obviously emergency situations in which the signal-warning portion of the imports would be useful, irrespective of whether the searchlight portion was used. Again, it is emphasized that the signal-warning bulb, socket, lens, wiring, contacts, switches and other elements take no part in the searchlight function of the lanterns. The signal-warning apparatus clearly adds an additional feature to the merchandise, which is significantly different from the searchlight function. Thus, following the rationale of the two *Fedtro* cases, these imports are more than portable electric lamps, as provided for in item 683.80.

And see also the decision in *Pollard Bearings Corporation* v. *United States*, 62 CCPA 60, C.A.D. 1146, 511 F. 2d 568 (1975), wherein the appellate court recently reiterated the principle that merchandise which in fact constitutes more than a particular article is not classifiable as that article. In *Pollard*, the court held that certain bearings were more than parts for water pumps since the bearings also served an additional important function in rotating the automobile's fan. The appellate court held that "the weight of the evidence clearly establishes that the imported bearings do not have one primary use or function, but rather have a dual primary function—supporting and rotating both the fan and water impeller—which renders the imported bearings 'more than' parts for water pumps [footnote reference omitted]". Similarly, in the present case, it is clear from the exhibits and testimony that the blinker lanterns "do not have one primary use or function, but rather have a dual primary function"—searchlight and signal-warning flasher.

Defendant principally relies upon *Continental Exchange, Ltd.* v. *United States*, 60 Cust. Ct. 233, C.D. 3333, 281 F. Supp. 892 (1968) as dispositive of the issue in the present case. In *Continental*, the merchandise comprised a small rechargeable flashlight with a red blinking light. The articles were classified under item 683.70 as "Portable electric lamps with self-contained electrical source, and parts thereof: Flashlights and parts thereof". Plaintiff claimed that the merchandise was more than a flashlight and properly dutiable under either item 685.70 or 683.80. On cross-examination, the plaintiff's witness admitted that the article had imprinted on it "Rechargeable Flashlight", and that it was narrower and longer than a package of cigarettes, could be carried in one's pocket or purse, and could be used to find a keyhole in a door at night, or searching for something in a purse. In sustaining the classification under item 683.70, the court held, *inter alia*, that the articles were primarily flashlights, finding no convincing evidence that the blinking red light was used or effective as a signalling light; and that since flashlights are not "lamps" within the common meaning of the term, they were not properly classifiable under item 683.80 as "Portable electric lamps with self-contained electrical source, and parts thereof: Other".

In the present case, however, observation and operation of the samples themselves, including turning on the signal-warning flasher of a representative sample (exhibit 6) outdoors at night, demonstrate to my satisfaction the potential usefulness of the "blinker" lanterns to motorists and others as a signal-warning apparatus in emergency situations. In this respect, expert testimony is not required, and I find the probative effect of the samples sufficient here.

It is, of course, fundamental that samples are potent witnesses and may have great probative effect—"a principle long acknowledged by this court and the Court of Customs and Patent Appeals" (see *Oxford, supra*, 70 Cust. Ct. at p. 223, and appellate court authorities cited).

Moreover, this court may take judicial notice that blinker lanterns, such as those before the court, are widely promoted and sold in automotive, camping and other retail outlets as devices which may be used for their signal-warning function as well as their illuminating function. It is common knowledge that in emergency situations on the highway the signal-warning flasher component of the blinker lanterns is frequently used by motorists. Under all of the facts and circumstances, I find uncreditable the testimony of defendant's witness that the signal-flasher component would be "next to useless" to a motorist at night for emergencies on the road (R. 201–202).

In short, the blinker lanterns in the present case are of a substantially different size and design than the small purse size flashlights in *Continental*, and the signal-warning flasher is a significant feature of the instant imports. Therefore, I have concluded that the *Continental* holding is not dispositive in the present case.

Defendant also asserts that *Astra Trading Corp.* v. *United States*, 56 Cust. Ct. 555, C.D. 2703 (1966), supports its position. There, the court held that a screwdriver with a flashlight component for illumination was not more than a screwdriver due to the presence of the illuminating feature. Respecting the "more than" issue, the court commented (56 Cust. Ct. at p. 561):

> The decision in *United States* v. *A. W. Fenton Company, Inc.*, 49 CCPA 45, C.A.D. 794, cited by plaintiff, is distinguishable. In that case, the imported article contained a motor which also embodied gears and a frame which served as a housing for other parts of the floor polisher. The additional features made the article more than a special type of a motor since it formed part of the assembly of the floor polisher. *The rationale of the A. W. Fenton decision, supra, would be applicable herein if the record showed that the article had a use in addition to its use as a screwdriver.* However, plaintiff's own witness, when questioned as to the purpose of the importation, stated, without qualification, that the article was "designed specifically to be used as an illuminated screwdriver," and "the purpose of this entire item is to be used as a screwdriver * * *"
>
> * * * We do not believe that the additional feature of illumination transforms the basic purpose of the imported article from use as a screwdriver into some other use; *nor do we believe that the illuminating feature gives the article a use in addition to its intended use as a screwdriver.* For, illumination notwithstanding,

> the article remains essentially a device restricted to the use of turning screws, i.e., a screwdriver. * * * [Emphasis added.]

Significantly, the illuminated screwdriver in *Astra* was designed to perform a single function—turning screws—and the illuminating feature merely assisted or facilitated the screw turning function.

Parenthetically, in the recent decision, *United States* v. *Oxford International Corp.*, 62 CCPA 101, C.A.D. 1154, 517 F. 2d 1374 (1975), our appellate court similarly held that a rearview bicycle mirror was not more than a mirror with frames or cases within the purview of item 544.51 by virtue of its mounting bracket, since the bracket merely facilitated the use of the article as a mirror. In alluding to the many cases wherein the "more than" doctrine was applied, the appellate court observed that "in each [case] there was a *second significant function* in the importation justifying the application of the 'more than' doctrine." (Emphasis added.)

Here, the signal-warning flasher is "a second significant function in the importation justifying the application of the 'more than' doctrine". Unlike the illuminated screwdrivers in *Astra* and the bicycle mirrors in *Oxford*, the blinker lanterns perform dual and independent functions, neither of which assists or facilitates the other. Hence, while the facts in the present case are readily distinguishable from those in *Astra* and *Oxford*, the *rationale* of those cases supports the conclusion reached herein.

Remington Rand Div. of Sperry Rand Corp. v. *United States*, 51 CCPA 57, C.A.D. 837 (1964), relied upon by defendant, is also distinguishable from the present case. There, the question was whether the rechargeable feature of certain flashlights made the articles more than flashlights for purposes of classification under paragraph 353 of the Tariff Act of 1930. In rejecting plaintiff's "more than" contention, the appellate court held that rechargeable flashlights fall within the definition of "flashlight", and distinguished *United States* v. *Sydney Kann & Co.*, 20 CCPA 77, T.D. 45702 (1932), as follows (51 CCPA at p. 60):

> * * * Thus, in *United States* v. *Sydney Kann & Co.*, 20 CCPA 77, T.D. 45702, this court held that a mechanical pencil having in its top portion a cigar or cigarette lighter was not a pencil. The court found that it was a "combination article," which seems to indicate that the item was something more than either a mere pencil or a mere lighter. At any rate, in our opinion the instant case and *Sydney Kann* are readily distinguishable. *A pencil and a cigarette lighter independently perform wholly different functions, and the combination of the two in no way affects the functioning of either of them.* On the other hand, a recharging network in a flashlight equipped with rechargeable batteries

> is, in a very real sense, integrated with the flashlight, and thus is as much a part of the flashlight as are the lens, bulb and other components referred to in the *Tower* case. The unit as a whole is imported, sold and used as nothing more than a particular kind of flashlight. Cf. *Biddle Purchasing Co.* v. *United States*, 50 CCPA 71, C.A.D. 823. [Emphasis added].

Since in the instant case, the searchlight and the signal-warning flasher components of the blinker lanterns "independently perform wholly different functions, and the combination of the two in no way affects the functioning of either of them", the blinker lanterns are analogous to the combination pencil and cigarette lighters in *Kann*, but are not analogous to the rechargeable flashlights in *Remington Rand*, the latter performing solely the function of a flashlight. It is an undisputed fact that basic portable lanterns, such as plaintiff's exhibit 2 and defendant's exhibit E1, do not include any emergency signal-warning component. Plainly, then, the addition of the signal-warning flasher function, which function is not essential to a basic portable electric lamp, makes the merchandise "more than" the article covered by item 683.80.

Additionally, defendant's effort to obfuscate the distinction urged by plaintiff between the "illumination" and signal-warning flasher functions of the blinker lanterns is not supported by the testimony of defendant's expert, Brindley, who stated on cross-examination (R. 179):

> Q. Now will you tell this court, please, with respect to function, how many functions does that article [exhibit 1] have?—A. Two, sir.
>
> Q. Would you tell the court what these functions are?—A. Illuminating and flashing.
>
> Q. Are they separate functions?—A. Insofar as they have separate switches and they are powered by separate bulbs, yes.

And at R. 181:

> Q. Now, sir, will you tell this court, from the functional point of view, how many functions are there to that item [exhibit 19]?—A. Two.
>
> Q. Will you tell the court what the two functions are?—A. Illuminating and blinking.

And at R. 185:

> Q. Now how many functions does that item [exhibit 18] perform?—A. Well, it has a four-position switch, if you want to include "off". It has an illuminating switch, a switch which allows both the blinking function and the illuminating function to occur simultaneously, and it has a switch to allow *the separate blinking function*. [Emphasis added.]

Q. Does the blinker function depend upon the lantern function, sir?—A. Well, the way the switch is designed, you have to go through the lantern function before you get to the blinker function.

Q. Would you look at it and answer the question if you would?—A. I would say in all honesty these are quite independent.

Finally, differentiating between a "design standpoint" and a "functional standpoint", defendant's witness opined that "[f]rom a design standpoint, the blinker is *definitely* more important", while from a functional standpoint he "*believed*" that the illuminating section is more important (R. 201).

I have carefully considered the testimony of the witnesses, the numerous exhibits, and the prior holdings of this court and our appellate court concerning the "more than" doctrine. Predicated upon all of the foregoing considerations, I am clear that the "blinking" lanterns with a signal-warning flasher are "more than" the portable electric lamps provided for in item 683.80, as contended by plaintiff. Consequently, I find no merit in defendant's argument that the imports are nothing more than a "form" of portable electric lamp within the purview of the *eo nomine* provision therefor in item 683.80. Since the imports are electrical articles not specially provided for, they are properly dutiable under item 688.40. The protests are sustained, and judgment will be entered accordingly.

(C.D. 4644)

The Kanthal Corporation *v.* United States

Wire rods—Wire

The testimony establishes that the imported merchandise, in the condition imported, is a product processed from billets, hot-rolled into wire rod approximately 7 millimeters in diameter, and next drawn, one time, through a die 0.204 inch in diameter. After importation the imported products are placed in an inventory pending further processing by drawing into wire of whatever size specified by a customer in the United States.

Defendant's witnesses testified that in the steel industry of the United States the term "process wire" refers to unfinished or partly finished wire that is placed in inventory for further processing by drawing, and includes wire rod that has been drawn one time.

For the purposes of TSUS wire rod is *intera alia* a semifinished hot-rolled product and wire is *inter alia* a finished drawn product.

Testimony that "process wire" is wire and includes a product that is drawn one time but unfinished is irreconcilably at odds with the tariff definition of wire as a finished drawn product.

Such testimony does not warrant a finding that the imported products consist of wire, merely because drawn. *C. J. Tower & Sons (Buffalo)* v. *United States*, 48 Treas. Dec. 636, Abs. 49897 (1925). Factually, the imported products while they might be described as "process wire" are a hot-rolled product and, drawn one time but still to be further processed by additional drawing, are semifinished rather than finished.

The fact that the TSUS definition essentially incorporates the judicial construction given the term "wire rods" in the *Tower* case or, at very least, is not at odds with the judicial construction of the term, is indeed some indication that Congress approved the *Tower* decision. *United States* v. *Curley-Bates Co.*, 46 CCPA 14, C.A.D. 688 (1958); *United States* v. *Great Pacific Co., Shui Tai & Co.*, 23 CCPA 319, T.D. 48192 (1936).

HELD. The imported products are properly dutiable, as claimed, under TSUS item 608.78 as wire rods rather than under TSUS item 609.45 as round wire, as classified.

Court Nos. 68/4195, etc.

Port of Bridgeport

[Judgment for plaintiff.]

(Decided April 1, 1976)

Barnes, Richardson & Colburn (*James Caffentzis* and *Rufus E. Jarman, Jr.*, of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*John N. Politis*, trial attorney, and *Andrew P. Vance*, Chief, Customs Section), for the defendant.

LANDIS, Judge: The overriding question in these cases, consolidated for trial,[1] is whether certain metal products imported from Sweden during the period 1966–1970, are "wire rods," of alloy iron or steel, tempered, treated or partly manufactured, as contended by plaintiff under TSUS item 608.78, or were properly classified by customs as "round wire" of alloy iron or steel, under TSUS item 609.45, as modified by T.D. 68–9.[2]

Wire rod and round wire, which are the subject of this controversy between the parties, are provided for in TSUS schedule 6, part 2, subpart B. Part 2 and subpart B of schedule 6 contain special rules

[1] There are thirty consolidated cases.

[2] Duty was assessed at various rates ranging from 12.5 per centum ad valorem on importations prior to 1968 to 11 per centum ad valorem on importations in 1970.

of interpretation and define important terms, in pertinent part, as follows:

SCHEDULE 6. – METALS AND METAL PRODUCTS

PART 2. – METALS, THEIR ALLOYS, AND THEIR BASIC SHAPES AND FORMS

* * * * * * *

Subpart B. – Iron or Steel

Subpart B. headnotes:

1. This subpart covers iron and steel, their alloys, and their so-called basic shapes and forms, and in addition covers iron or steel waste and scrap.

* * * * * * *

3. Forms and Condition of Iron or Steel.—For the purposes of this subpart, the following terms have the meanings hereby assigned to them:

* * * * * * *

(f) Wire rods: A coiled, semifinished, hot-rolled product of solid cross section, approximately round in cross section, not under 0.20 inch nor over 0.74 inch in diameter.

* * * * * * *

(i) Wire: A finished, drawn, non-tubular product, of any cross-sectional configuration, in coils or cut to length, and not over 0.703 inch in maximum cross-sectional dimension. The term also includes a product of solid rectangular cross section, in coils or cut to length, with a cold-rolled finish, and not over 0.25 inch thick and not over 0.50 inch wide.

Wire rod and round wire are classified under subpart B, in pertinent part, as follows:

	Wire rods of iron or steel:	
	* * * * * * *	
	Alloy iron or steel:	
608.76	Not tempered, not treated, and not partly manufactured	* * *
608.78	Tempered, treated, or partly manufactured	0.375¢ per lb. +4% ad val. + additional duties (see headnote 4)

* * * * * * * *		
Wire of iron or steel:		
* * * * * * *		
Round wire:		
* * * * * * *		
609.45	Alloy iron or steel	[Various rates depend on dates of importation] + additional duties (see headnote 4)

The pleadings filed by both sides concede that the imported products were imported in a coiled form; that they are of solid cross section, and that they are not under 0.20 inch nor over 0.74 inch in diameter. To that extent, the imported products meet the specifications, both for "wire rods," and "wire." [3] Defendant has denied plaintiff's allegations that the imported products are definitionally "approximately round," "semi finished," "hot-rolled," wire rod.

On trial, plaintiff adduced testimony from three witnesses in its employ and introduced four illustrative exhibits in evidence. Exhibit 1 is a physical sample of the imported products in the condition imported which, as the record attests, is a hot-rolled product drawn one time through a die. Exhibits 2, 3, and 4 are physical samples of resistance (electrical) wire which plaintiff processed (by further drawing) in the United States from products in the condition of the imported products (exhibit 1). Defendant also produced three witnesses, adduced their testimony, and introduced four exhibits in evidence. Exhibit A is a physical sample of a hot-rolled wire rod, not drawn; exhibit B is a metal die with an opening 0.204 inch in diameter for drawing wire rod or wire, and exhibit C is a physical sample of a product produced by cold-drawing exhibit A through the metal die (exhibit B). Exhibit D is a booklet published by the public relations department of the American Iron and Steel Institute entitled "Steel Processing Flow Charts." Its evidentiary value is limited to the schematically pictured processes (excluding the accompanying text) depicted on the pages entitled "Steel Rods and Wire Made From Them." So far as I can discern, the material and relevant facts, next summarized, are not in dispute.

The imported products, in the condition imported, were processed from billets, hot-rolled into wire rod approximately 7 millimeters in

[3] *Wire not over 0.708 inch in maximum cross-sectional dimension is obviously not over 0.74 inch in diameter.*

diameter. After hot-rolling, the wire rod was drawn, *one time*, through a die 0.204 inch in diamter to produce the imported products in the condition shipped to the United States.

On plaintiff's side, it was testified that the purpose of drawing the wire rod one time was to select material without cracks for shipment. As one witness stated, if the hot-rolled material was shipped without being drawn one time, the percentage of scrap to the importer would increase and the importer had no facilities to melt the scrap. "Also, transportation costs across the ocean would be larger because of the higher volume that would be required to transport it over here in order to get the same amount of finished product."

The imported products are held in plaintiff's inventory. As orders are received from customers, the imported products are removed from inventory and further drawn in the United States to wire of whatever size specified by the customer. After the final drawing, to the size specified by the customer, the wire is annealed and inspected to determine that it meets the customer's requirements for roundness and quality.

Plaintiff on several occasions, did sell selected small quantities of the imported products without further processing to accommodate customers in unidentified emergency situations. The imported products are not, however, usually offered or sold in the United States in the condition imported.[4]

Plaintiff's first witness Erik Hagglund was of the opinion that the imported products were semifinished because they were unsuitable to be used as a finished product until reprocessed by drawing into finished wire of finer sizes. As explained by one of plaintiff's witnesses, importations fall into two categories, finished material and reprocessing material. Finished material is imported on order from a specific customer and the material is immediately unpacked and checked by plaintiff's quality control department. Reprocessing material is stored without being unpacked or checked until it is released to the production department as required. Any defects in the reprocessing material show up during the drawing operation, which is one of the reasons why the hot-rolled product is drawn one time before importation.

Defendant's witnesses testified that the term "semifinished" identifies a product held in inventory for further processing; that it refers to everything that is a hot-rolled product down to and including hot-rolled rod, and that in the steel industry the term "semifinished" refers only to hot-rolled products at some stage in the sequence of

[4] At the close of plaintiff's evidence, defendant moved to dismiss the case on the ground that *prima facie*, the evidence did not support plaintiff's claims. In view of the result reached in this decision, the motion is denied.

production steps. Finished wire, according to defendant's witnesses, is wire that is in a condition that it can be sold to a customer and wire that is drawn to give it that degree of concentricity that it can be used to fabricate an article, if it is not desired to further process (draw) it into other sizes. One of defendant's witnesses testified that the term "finished" was not used in the stainless steel industry. Defendant's witnesses were firm in their opinions that, in the steel industry, once wire rod passes through a die (i.e. is drawn one time), it becomes wire.

When asked what the term "process wire" meant in the steel industry, it was stated that the term referred to "unfinished" or "partly finished" wire held in inventory for further processing; that the term included wire that had been drawn one time, and means "anything that's not a finished product."

There is also testimony that the imported products are "round" even though from an engineering standpoint perfect roundness is impossible to achieve. No witness was able to demarcate a point that would distinguish a "round product" from an "approximately round" product and it was left as a matter of degree.

Defendant has mustered several points which it argues support its position that one drawing is definitionally sufficient to change hot-rolled wire rod into finished drawn round wire. One point is grounded on the testimony defendant adduced that in the steel industry wire rod becomes wire at the point that it is drawn through a die the first time. However, in *C. J. Tower & Sons (Buffalo)* v. *United States*, 48 Treas. Dec. 636, Abs. 49897 (1925), similar testimony adduced by defendant to support classification of certain wire as "round wire" rather than as "wire rods" was relevantly rejected and the wire held dutiable as "wire rods" for the following stated reason:

> We do not believe that the testimony herein offered by the Government warrants a finding of fact that this merchandise consists of wire, merely because it has been drawn. We deem it safer to follow the congressional view that there are rods which are cold-drawn, and that such drawing does not of itself make the rods duitiable as wire. At least, before nullifying a specific provision for such rods, positive testimony of the most convincing character should be submitted establishing as a fact that there exists no such rods in the trade and commerce of this country. The present record contains proof that there are such rods, and that the merchandise in question is of that class. [Page 637.] [See also, *E. Dillingham, Inc.* v. *United States*, 49 Cust. Ct. 34, C.D. 2357 (1962).]

Defendant's additional points are not arguably persuasive. The testimony that it is impossible to achieve perfect roundness in wire

undercuts the substance of defendant's point that the imported products are not definitionally "approximately round." Material cited by defendant relevant to the classification of wire rods under paragraph 315 of the 1930 Tariff Act, if anything, makes a stronger case for classifying the imported products as wire rod than as round wire. *C. J. Tower & Sons (Buffalo)* v. *United States, supra.*

As in *Tower, supra,* the opinion testimony in this case is also divided on the question of whether the imported products drawn one time are "wire rods" as claimed or "round wire" as classified. The definition of "wire" in TSUS definitively refers to a finished drawn product. This record preponderantly establishes that the imported products are not finished drawn because they are held in the importer's inventory for further processing by drawing in the United States. In fact, defendant's witnesses testified that wire held in inventory for further processing by drawing is known in the industry as "process wire." It is not a "finished product." As to the understanding in the steel industry, it is stated:

> * * * As soon as a rod has been given a draft [the operation itself is called drawing], it is thereafter designated as a wire, though many more drafts and various other treatments may be necessary to work it into wire of the size, finish and temper desired. In wire-drawing plants, any wire which, following the initial drawing from the rod, is to receive further work or treatment before it is finished is designated as *process wire.* After the first draft from the rod, process wire may be finished in various ways. [*The Making, Shaping and Treating of Steel,* U.S. Steel Corp., 8th ed., page 783 (emphasis quoted).]

For the steel industry to say that "process *wire*" is wire and includes a product that is drawn one time but unfinished strikes me as irreconcilably at odds with the statutory definition that, for the purposes of TSUS, "wire" is a finished drawn product. Factually, I am of the opinion that while the instant importations fit the commercial description of "process wire," they are in fact a hot-rolled product that has been drawn one time and they must be further processed by additional drawing. I find and conclude, therefore, that the imported products are "semifinished" rather than "finished." As *inter alia* defined in TSUS, wire rods are semifinished hot-rolled products. The fact that the TSUS definition essentially incorporates the judicial construction given the term "wire rods" in the *Tower* case or, at very least, is not at odds with the judicial construction of the term, is indeed some indication that Congress approved the *Tower* decision. *United States* v. *Curley-Bates Co.,* 46 CCPA 14, C.A.D. 688 (1958);

United States v. *Great Pacific Co., Shui Tai & Co.*, 23 CCPA 319, T.D. 48192 (1936).

For the reasons stated, I am brought to follow the *Tower* decision. Accordingly, I hold that the imported products are properly dutiable under TSUS item 608.78 as wire rods, of alloy iron or steel, tempered, treated or partly manufactured.

Judgment will enter accordingly.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *April 5, 1976.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P76/81	Richardson, J. March 30, 1976	Coleco Industries, Inc.	73-8-02377	Items 735.20 and 734.15 10%	Item 734.20 5.5%	Agreed statement of facts	Champlain-Rouses Point (Ogdensburg) Skillshot basketball games

P76/82	Richardson, J. March 30, 1976	Davar Products, Inc., et al.	68/9162, etc.	Item 653.40 19% (items marked "A", "B" and "C") (as entireties)	Lamps and bulbs not dutiable as entireties; no separate values returned; entries returned to regional commissioner to determine separate values (items marked "A", "B" and "C")	Mobilite, Inc. v. U.S. (C.R.D. 73-11) (items marked "A", "B" and "C")	New York High-intensity lamps and bulbs (items marked "A") Fluorescent lamps and bulbs (items marked "B") Desk lamps with bulbs (items marked "C")
P76/83	Richardson, J. March 30, 1976	Otto Kadmon, Inc.	70/6829, etc.	Item 653.40 or 653.39 19%	Item 688.4. 11.5%, 9% or 8%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	New York Tree tops, Christmas decorations, etc.; non-illuminating, electrical, nonutilitarian articles
P76/84	Richardson, J. March 30, 1976	New York Merchandise Co., Inc.	71-10-01422	Item 653.39 19%	Item 688.40 8%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Sons, Inc. (C.A.D. 1111)	San Diego Decorative, nonilluminating, nonutilitarian merchandise of base metal described as "circle" electric treetops
P76/85	Boe, C. J. March 31, 1976	Astra Trading Corp.	72-7-01494	Item 706.60 20%	Item 774.60 11.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Plastic bags in various sizes, having wide openings and handles with no closure on top

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P76/86	Richardson, J. March 31, 1976	Fedtro, Inc.	68/43730	Item 684.70 15%	Item 685.20 10%	Agreed statement of facts	New York Earphones of a type chiefly used as parts of television apparatus
P76/87	Richardson, J. March 31, 1976	Hawker Siddeley, Inc.	70/48692	Item 604.60 7% on value of returned U.S. articles (U.S. $9450)	Items 806.20/ 694.60 7% only upon the cost of Canadian repairs (U.S. $4950)	Agreed statement of facts	New York American goods returned; airplane parts
P76/88	Richardson, J. March 31, 1976	Otto Kadmon, Inc., et al.	69/16267, etc.	Item 653.40 or 653.39 19%	Item 688.40 11.5%, 10% or 9%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	New York Tree tops, Christmas decorations, etc.; non-illuminating, electrical, non-utilitarian articles

P76/89	Richardson, J. March 31, 1976	New York Merchandise Co., Inc.	65/25960, etc.	Item 653.40 19%	Item 688.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	San Diego Decorative, nonilluminating, non-utilitarian merchandise, described as electric bird cages, etc.
P76/90	Richardson, J. March 31, 1976	Oxford International Corp.	69/26179	Item 653.39 19%	Item 685.70 7.5%	Agreed statement of facts	Philadelphia Electrical visual signalling apparatus
P76/91	Maletz, J. March 31, 1976	Coleco Industries, Inc.	75-1-00160, etc.	Item 734.15 10%	Item 734.20 5.5%	Coleco Industries, Inc. v. U.S. (C.D. 4605)	Champlain-Rouses Point (Ogdensburg) Game ("Decision Football")
P76/92	Newman, J. March 31, 1976	Fedtro, Inc.	68/45999, etc.	Item 682.60 15%, 13%, 12% and 10%	Item 688.40 11.5%, 10%, 9% and 8%	Fedtro, Inc. v. U.S. (C.D. 4548)	New York Multi purpose battery charges
P76/93	Re, J. March 31, 1976	Oxford International Corp.	67/44806	Item 653.40 19%	Item 685.70 8.5%	Oxford International Corporation v. U.S. (C.D. 4608)	Chicago "No. 140 Directional Signal Tail Lites with Reflector"

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decision

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R76/53	Richardson, J. March 30, 1976	Topp Import & Export, Inc.	R68/15289	Constructed value	$5.55 ("Fiesta" TFM-122), $6.40 ("Juliette" T-1490), $6.60 ("Juliette" TK-114), per set, net packed	Judgment on the pleadings	Los Angeles Radios with accessories

Appeal to United States Court of Customs and Patent Appeals

APPEAL 76–14.—Rhodia, Inc. *v.* United States.—N-METHYL GLUCAMINE—OTHER NITROGENOUS COMPOUNDS—MONOMETHYL MONOAMINES—TSUS. Appeal from C.D. 4630.

Importations of a compound commonly called "N-methyl glucamine" were classified under the provision in item 425.52, Tariff Schedules of the United States, as modified by T.D. 68–9, for other nitrogenous compounds. Plaintiff-appellant claimed that the merchandise was properly classifiable under the provision in item 425.20, as modified by T.D. 68–9, for mono-, di-, and tri-(methyl-, ethyl-, propyl-, and butyl-) monoamines. Plaintiff moved for judgment on the pleadings and defendant cross-moved for summary judgment. The Customs Court denied plaintiff's motion, granted defendant's motion and sustained the classification under item 425.52.

It is claimed that the Customs Court erred in finding and holding that the imported merchandise is properly classifiable under item 425.52, *supra;* in failing to find and hold that it is more specifically provided for under item 425.20, *supra;* in failing to find and hold that the merchandise is a monomethyl monoamine; in finding and holding that the classification of the merchandise is governed by a determination of its principal functional group; in failing to find and hold that the classification of the imported merchandise is governed by schedule 4, part 2, subpart D, headnote 1 which provides that an organic compound which is described in more than one functional group is classifiable in the first group in which it is described; in failing to find and hold that the merchandise must be classified under item 425.20 since it contains an amino group that is the first functional group in which it is described; in substituting the opinion testimony of chemists for the clear statutory directive of schedule 4, part 2, subpart D, headnote 1; in failing to follow the rule of the decision and principles of statutory construction set forth in *Rhodia, Inc.* v. *United States*, 69 Cust. Ct. 19, C.D. 4366 (1972).

ERRATUM

In Vol. 10, No. 10, weekly Customs Bulletin, March 10, 1976, page 21 (C.D. 4634), line 8, change the word "timberland" to "timberstand".

Index

U.S. Customs Service

Customs Court

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